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FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 14-31 March 1994

REVISED NEGOTIATING TEXT

Prepared by the Chairman of the Conference

PREAMBLE

Recalling Agenda 21 adopted by the United Nations Conference on Environment and Development at Rio de Janeiro in June 1992, in particular Chapter 21, Programme Area C thereof, which calls upon States to commit themselves to the sustainable use of the living marine resources of the high seas;

Recalling also United Nations General Assembly resolution 47/192, by virtue of which a conference on straddling fish stocks and highly migratory fish stocks was convened, in accordance with the mandate established in the United Nations Conference on Environment and Development;

Seeking to address the problems identified in Agenda 21, Chapter C, namely that management of high seas fisheries is inadequate in many areas and that some resources are over-utilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States;

Further recognizing the need to strengthen fisheries conservation and management, in the context of sustainable development, to promote the maintenance of the quantity, quality, diversity and availability of fishing resources for present and future generations;

Mindful that the sustainability of straddling fish stocks and highly migratory fish stocks is dependent on the willingness of States, individually and in cooperation with each other, to adopt measures which assure the conservation and management of the stocks overall;

Reaffirming their commitment to the effective implementation of the principles embodied in Parts V and VII of the 1982 United Nations Convention on the Law of the Sea;

Further recognizing the urgent need for all members of the international community, particularly those with fishing interests, to strengthen their cooperation in the conservation and management of living marine resources in accordance with the 1982 United Nations Convention on the Law of the Sea;

And recalling the adoption of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas by the FAO Conference in November 1993;

States have agreed as follows:

I. OBJECTIVE

1. States 1/ have a duty to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks. The biological unity of stocks which occur both in the high seas and in areas under national jurisdiction requires that measures taken on the high seas and those taken in areas under national jurisdiction be compatible in order to ensure conservation and management of the stocks overall. To this end coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures so as to effectively conserve and manage straddling fish stocks and highly migratory fish stocks.

II. APPLICATION

2. Except as provided for in parts B and C of section III, the provisions set out in this document shall apply to conservation and management on the high seas of straddling fish stocks and highly migratory fish stocks. In accordance with the 1982 United Nations Convention on the Law of the Sea ("the Convention"), the coastal State has responsibility for conservation and management of such stocks in areas under national jurisdiction.

III. GENERAL PRINCIPLES

A. The nature of conservation and management measures

3. Coastal States and States fishing on the high seas shall give effect to the duty to cooperate, in accordance with the Convention, by establishing conservation and management measures for straddling fish stocks and highly

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1/ For the purposes of these provisions, references to States should be interpreted as including the European Economic Community in matters within its competence. These provisions also apply to the fishing entities whose vessels fish on the high seas.

migratory fish stocks and shall commit themselves to responsible fishing. They shall:

(a) on the basis of the best scientific evidence available, ensure that conservation and management measures are directed at maintaining or restoring stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) adopt conservation and management measures to promote optimum utilization and ensure long-term sustainability of the fish stock(s) concerned, which may include, inter alia:

(i) establishment of total allowable catches and quotas;

(ii) limits to fishing effort (e.g. number of vessels or fishing days);

(iii) limits on the size of fish;

(iv) gear and operational restrictions (e.g. minimum mesh sizes);

(v) area and seasonal closures;

(c) take into consideration the effects on species belonging to the same ecosystem or dependent on or associated with the target species, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(d) promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques in order to minimize pollution, waste, discards, catch by lost or abandoned gear, and catch of non-target species, in particular endangered species, taking into account the need for protecting biodiversity and for multi-species, ecosystems-oriented management;

(e) take measures to deal with over-harvest and over-capacity and to ensure a level of fishing effort commensurate with the sustainable utilization of fisheries resources;

(f) take into account the special requirements of developing States in relation to straddling fish stocks and highly migratory fish stocks as set out in section IX, particularly the need for assistance to developing countries, including financial, scientific and technological assistance and training, in order that they can fulfil their obligations with respect to conservation and management of such stocks;

(g) enhance the level of certainty in management decision-making by collecting and sharing timely, complete and accurate data, as set out in annex 1, from fishing activities, inter alia, on position, catch, by-catch and fishing effort as well as information from national, regional and international research programmes;

(h) conduct and promote scientific research in support of fishery conservation and management, including abundance surveys and biological studies on target and non-target species, as well as research on oceanographic, climatic and other environmental factors;

(i) continuously assess and review fishing activities which may have adverse effects on the conservation of straddling fish stocks and highly migratory fish stocks;

(j) promote the implementation of conservation and management measures through establishment of effective monitoring, control and surveillance;

(k) ensure that conservation measures do not discriminate in form or in fact against the fishermen of any State.

B. Precautionary approaches to fisheries management

4. In order to protect and preserve the marine environment and living marine resources, consistent with the Convention, the precautionary approach shall be applied widely by States and by subregional or regional fisheries management organizations or arrangements to fisheries conservation, management and exploitation in accordance with the following provisions:

(a) in order to improve conservation and management decision-making, States shall obtain and share the best scientific information available and develop new techniques for dealing with uncertainty. States shall take into account, inter alia, uncertainties, including with respect to the size and productivity of the stocks, management reference points, stock condition in relation to such reference points, levels and distributions of fishing mortality and the impact of fishing activities on associated and dependent species, as well as climatic, oceanic, environmental and socio-economic conditions;

(b) in managing fish stocks, States should consider the associated ecosystems. They should develop data collection and research programmes to assess the impact of fishing on non-target species and their environment, adopt plans as necessary to ensure the conservation of non-target species and consider the protection of habitats of special concern;

(c) the absence of adequate scientific information shall not be used as a reason for postponing or failing to take measures to protect target and non-target species and their environment;

(d) the precautionary approach shall, based on the best scientific evidence available, include all appropriate techniques and be aimed at setting stock-specific minimum standards for conservation and management. States shall be more cautious when information is poor. States should determine precautionary management reference points, taking into account the guidelines contained in annex 2 and the action to be taken if they are exceeded. When precautionary management reference points are approached, measures shall be taken to ensure that they will not be exceeded. If such reference points are

exceeded, recovery plans shall be implemented immediately to restore the stock(s) in accordance with pre-agreed courses of action;

(e) in cases where the status of stocks is of concern, strict conservation and management measures shall be applied and shall be subject to enhanced monitoring in order to review continuously the status of the stocks and the efficacy of the measures to facilitate revision of such measures in the light of new scientific evidence;

(f) in the case of new or exploratory fisheries, conservative measures including catch and/or effort limits shall be established as soon as possible in cooperation with those initiating the fishery and shall remain in force until there are sufficient data to allow assessment of the impact of the fishery on the long-term sustainability of stocks and associated ecosystems.

C. Compatibility

5. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas, exercised in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal State(s) and States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in section IV, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas areas;

(b) with respect to highly migratory fish stocks, the relevant coastal State(s) and other States whose nationals fish in the region for these stocks shall cooperate directly or through the appropriate mechanisms for cooperation provided for in section IV with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the exclusive economic zone.

6. Coastal States shall regularly notify States fishing on the high seas in the subregion or region, either directly or through the appropriate subregional or regional fisheries organization or arrangement, of the measures adopted by such coastal States for straddling fish stocks and highly migratory fish stocks in areas under national jurisdiction.

7. In determining the manner in which compatible conservation and management measures are to be achieved for straddling fish stocks and highly migratory fish stocks, and the nature and extent of those measures, States shall respect any measures and arrangements adopted by relevant coastal States in accordance with the Convention in areas under national jurisdiction and shall:

(a) take into account the biological characteristics of the stock(s), the relationship between the distribution of the stock(s) and the fisheries and the

geographical particularities of the region, including the extent to which stock(s) occur and are fished in areas under national jurisdiction;

(b) take into account the relative dependence of the coastal State(s) and States fishing on the high seas on the stock(s) concerned;

(c) ensure that the measures do not result in undue harmful impact on the living marine resources;

(d) ensure that the measures established in respect of the high seas are no less stringent than those established, in accordance with the Convention, in areas under national jurisdiction in respect of the same stock(s).

8. If, in spite of having made every effort to cooperate for the purposes specified in paragraph 1, States are unable to agree on compatible and coordinated conservation and management measures, they shall resolve their differences in accordance with the dispute settlement provisions set out in section VIII. In the meantime, until the dispute settlement process is ended, States shall continue to observe the provisions herein, and relevant minimum international standards and otherwise act in a manner consistent with the duties imposed on States under the Convention, and:

(a) where coordinated measures for conservation and management of the stock(s) have been adopted by the relevant coastal States; or

(b) where there is only one coastal State involved, and that coastal State has adopted measures for the conservation and management of the stock(s);

States fishing on the high seas shall observe conservation and management measures equivalent in effect to the measures applying in the area(s) under national jurisdiction. If measures have been agreed in respect of the high seas, in the absence of conservation and management measures as described in (a) or (b) above, the relevant coastal State(s) shall observe measures equivalent in effect to those agreed in respect of the same stock(s) in the high seas.

IV. INTERNATIONAL COOPERATION

A. Mechanisms for international cooperation

9. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region.

10. The purpose of such cooperation shall be to agree on conservation and management measures, as required by the Convention, with respect to particular fish stocks, to ensure the long-term sustainability of those stocks and to preserve the marine environment which supports them.

11. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the stocks concerned may be under threat of over-exploitation or where a new fishery is being pursued for the stock(s). Consultations shall be initiated at the request of any interested State. Pending agreement States shall observe the provisions herein and shall act in good faith in a manner which does not constitute an abuse of rights and with due regard to the rights, interests and duties of other States.

12. Where no appropriate subregional or regional fisheries management organization or arrangement exists to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States concerned shall enter into consultations with a view to entering into appropriate arrangements to ensure effective conservation and management of the stocks in question.

13. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by participating in the work of the subregional or regional organization or arrangement, in accordance with the mandate and terms of participation of that organization or arrangement.

14. Subregional and regional fisheries management organizations and arrangements shall be open to participation, on a non-discriminatory basis, by all States with an interest in the stocks concerned.

15. Only those States that participate in the work of a subregional or regional fisheries management organization or arrangement, or that otherwise cooperate with the applicable conservation and management measures, should have access to the fishery to which those conservation and management measures apply.

16. In implementing the provisions of paragraphs 9 to 15 above, States shall give effect, at the subregional or regional level, to the provisions of the Convention and other international agreements consistent with the Convention concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

B. Regional fisheries management organizations or arrangements

17. In establishing subregional or regional fisheries management organizations or arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on the following:

(a) the stock(s) to which the conservation and management measures shall apply, taking into account the biological characteristics of the stock(s) concerned and the nature of the fisheries involved;

(b) the area to be covered, taking into account the relevant provisions of the Convention and the characteristics of the region, including socio-economic, geographical and environmental factors;

(c) how the new organization or arrangement will relate to the role, objectives and operations of any existing fisheries organizations or arrangements;

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stock(s) in question including, where appropriate, the establishment of a scientific advisory body.

18. In establishing a regional fisheries management organization or arrangement in respect of an enclosed or semi-enclosed sea, States shall comply with the provisions of article 123 of the Convention.

19. States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

20. Coastal States and States fishing on the high seas which participate in a subregional or regional fisheries management organization or arrangement shall agree on and comply with conservation and management measures to ensure sustainability of the stock(s) in question. To that end they shall:

(a) agree, as appropriate, on allocation of participatory rights such as allocations of allowable catch or levels of fishing effort;

(b) adopt and apply international minimum standards for the responsible conduct of fishing operations;

(c) establish a scientific body as appropriate;

(d) develop agreed standards for collection, reporting, verification and exchange of data and information on fisheries for the stock(s) in question;

(e) compile and disseminate accurate and complete statistical data, as described in annex 1, relating to catches of targeted stocks and non-targeted species (both fish and non-fish) and any other relevant information necessary to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(f) promote, conduct, and disseminate the results of, scientific assessments of the stocks and relevant research including research on environmental and oceanographic factors;

(g) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(h) undertake appropriate efforts, consistent with international law, to ensure that no vessels engage in any activity contrary to the objectives of the organization or arrangement;

(i) develop and use selective, environmentally safe and cost-effective fishing gear and techniques in order to minimize pollution, waste, discards and the catching of untargeted species, in particular endangered species, taking into account the need for protecting biodiversity;

(j) agree on the means by which the activities of the organization or arrangement will be financed, bearing in mind the relative benefits derived from the fishery and differing capacities of countries, especially the developing coastal States, to provide financial and other contributions;

(k) agree on measures to deter non-parties from undermining the effectiveness of conservation and management measures established by the organization or arrangement in a manner consistent with international law;

(l) agree on means by which the fishing interests of new entrants will be accommodated;

(m) agree on decision-making processes which facilitate timely and effective determination of conservation and management measures;

(n) provide procedures for timely, compulsory and binding settlement of disputes concerning conservation and management measures, consistent with the relevant provisions of the Convention. Procedures for settlement of disputes shall be applicable to all members of the organization or parties to the arrangement;

(o) consult, cooperate and coordinate, as appropriate, with other relevant fisheries organizations and arrangements;

(p) establish procedures for regular review of the effectiveness of the organization or arrangement.

21. New members of a subregional or regional fisheries management organization or new parties to an agreement or arrangement shall be entitled to accrue benefits in exchange for the obligations that they undertake. Any allocation of participatory rights to new participants or new parties shall take into account, inter alia:

(a) the status of the stock(s) in question and the existing levels of fishing effort in the fishery;

(b) the interests, fishing patterns and fishing practices of existing participants and their respective contributions to conservation and management of the stock(s);

(c) the needs of coastal fishing communities which are dependent mainly on fishing for the stock(s);

(d) the fishing patterns and practices of each new participant and their prior contribution, if any, to conservation and management of the stock(s), to the collection and provision of accurate data and to the conduct of scientific research on the stock(s);

(e) the special requirements of developing States from the region or subregion, particularly where they are culturally and/or economically dependent on marine resources.

22. In giving effect to their duty to cooperate by participating in the work of the subregional or regional fisheries management organization or arrangement, States shall:

(a) ensure that data collection and processing adequately meet scientific assessment requirements and support management objectives;

(b) compile and submit the catch, effort and other relevant data referred to in annex 1 within an agreed format and time-frame;

(c) develop and share new resource assessment methodologies, management models and other analytical techniques;

(d) cooperate in the conduct of scientific research, including assessment of stock(s);

(e) ensure the full cooperation of their relevant national agencies and industries in the agreed work of the subregional or regional fisheries management organization or arrangement.

23. Subregional and regional fisheries management organizations or arrangements shall be transparent in their decision-making and other activities. Representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to participate in meetings of such bodies as observers or otherwise, as appropriate, in accordance with the terms and conditions for participation agreed upon by the regional organization concerned.

V. COMPLIANCE WITH AND ENFORCEMENT OF HIGH SEAS FISHERIES CONSERVATION AND MANAGEMENT MEASURES

A. Duties of the flag State

24. Conservation and management measures for straddling fish stocks and highly migratory fish stocks must be effectively applied. To this end, flag States whose vessels fish on the high seas for straddling fish stocks and highly migratory fish stocks shall take the necessary measures to ensure that vessels entitled to fly their flag comply with applicable conservation and management measures. Measures to be taken by the flag State in respect of vessels entitled to fly its flag shall include an effective combination of the following:

(a) monitoring, control and surveillance of such vessels, their fishing operations and related activities;

(b) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with applicable procedures agreed on at a subregional, regional or global level, if any, including:

(i) national legislation to prohibit fishing, on the high seas and in areas under the national jurisdiction of other States, by vessels that are not duly licensed or authorized to fish, or fishing by such vessels otherwise than in accordance with the conditions of a licence, authorization or permit;

(ii) requirements that vessels fishing on the high seas must carry the licence, authorization or permit on board the vessel at all times and must produce such licence, authorization or permit on demand for inspection by a duly authorized person;

(iii) requirements that the terms, conditions and other information contained in a licence, authorization or permit are sufficient to fulfil any subregional, regional or global obligations of the flag State;

(iv) requirements that vessels fishing on the high seas refrain from activities which undermine the effectiveness of conservation and management measures;

(c) implementation of quotas and any other control measures adopted in accordance with subregional or regional arrangements;

(d) establishment of a national record of fishing vessels incorporating information on such vessels authorized to fish on the high seas and such measures as may be necessary to ensure that all such vessels are entered in that record;

(e) provision of information required to be entered into international records or regional registers, as agreed, of vessels fishing or authorized to fish on the high seas;

(f) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking and Identification of Fishing Vessels;

(g) requirements for catch verification (target and non-target species) through agreed observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(h) requirements for regular reporting of position, catch and effort information;

(i) implementation of national and regionally agreed inspection schemes, including requirements for such vessels to permit access by inspectors from other States in the region or subregion. Detailed requirements for inspection schemes must include requirements for vessel operators to allow any duly authorized person(s) to board vessels and carry out the duties agreed under the scheme;

(j) implementation of national and regionally agreed observer programmes, including requirements for such vessels to permit access by observers from other States in the subregion or region. Detailed requirements for observer programmes must include requirements for vessel operators to allow observers to board vessels and carry out the functions agreed under the programme;

(k) development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with national and regionally agreed integrated systems;

(l) the regulation of transshipment on the high seas to ensure that applicable conservation and management measures, including those relating to monitoring, control and surveillance, are not undermined;

(m) measures to implement, for such vessels, subregional, regional or global standards for collection of catch (target and non-target species), effort and other relevant fisheries data in the agreed format and time-frame as set out in annex 1;

(n) requiring compliance with international minimum standards for responsible fishing practices;

(o) ensuring that fishing activities comply with subregionally or regionally agreed measures relating to minimizing non-target catches;

(p) disseminating information through appropriate programmes amongst all involved in fishing activities, concerning the content of, and basis for, applicable conservation and management measures.

25. The flag State shall effectively exercise its jurisdiction and control over vessels entitled to fly its flag and shall authorize such vessels to be used for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and the provisions of this document.

26. Where there is a regionally agreed system of monitoring, control and surveillance in effect, flag States shall ensure that the measures they impose are compatible with that system.

B. Compliance and enforcement by the flag State

27. The flag State shall ensure compliance by vessels entitled to fly its flag with applicable conservation and management measures and international minimum standards. To this end, the flag State shall:

(a) adopt legislation and administrative measures to ensure that vessels entitled to fly its flag comply with applicable conservation and management measures;

(b) provide for the effective enforcement of such measures irrespective of where violations occur;

(c) ensure that, where it has been established, in accordance with the laws of the flag State, that a vessel entitled to fly its flag has been involved in the commission of a serious breach of applicable conservation and management measures, that the vessel is prohibited from fishing on the high seas until such time as all outstanding criminal or civil judgments in respect of such vessel have been satisfied;

(d) investigate immediately and fully any alleged violation of applicable conservation and management measures, which may include the physical inspection of the vessel(s) concerned, and report promptly to the State alleging the violation and the relevant subregional, regional or international organization or arrangement on the progress and outcome of the investigation. Investigations may be undertaken directly, in cooperation with other interested State(s), or through the relevant subregional or regional fisheries conservation and management organization or arrangement. Information on the progress and outcome of the investigations should be provided to all States having an interest in or affected by the alleged violation;

(e) require any vessel entitled to fly its flag to give information to the investigating authority regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel has committed such a violation;

(f) if satisfied that sufficient evidence is available to enable proceedings to be brought in respect of an alleged violation, institute proceedings without delay in accordance with the laws of the flag State and, where appropriate, detain the vessel.

28. A flag State conducting an investigation of an alleged violation may request the assistance of any other State whose cooperation may assist in clarifying the circumstances of the case, including identifying fishing vessels reported to have engaged in activities undermining applicable conservation and management measures. All States shall endeavour to meet reasonable requests of the flag State in connection with such investigations. A flag State should utilize evidentiary material made available to it by other States or organizations.

29. All States shall take measures for their nationals to ensure that they comply with applicable conservation and management measures and other international minimum standards. Such measures shall permit cancellation or suspension of authorizations to serve as vessel masters or fishing masters.

30. Sanctions applicable in respect of violations shall be of sufficient gravity as to be effective in securing compliance and to act as a deterrent, and to deprive offenders of the benefits accruing from their illegal activities.

C. Regional agreements and arrangements for compliance and enforcement

31. The flag State, in addition to fulfilling its duties in respect of vessels entitled to fly its flag, shall cooperate directly with relevant coastal States and through subregional or regional fisheries management organizations or arrangements in the development of regionally agreed procedures for the conduct of fisheries monitoring, control, surveillance and law enforcement. Where appropriate, fisheries monitoring and surveillance shall be conducted in accordance with such regionally agreed procedures. Within subregions or regions, States shall cooperate in the enforcement of their respective fisheries laws and regulations having regard to any specific agreements for that purpose. To this end, States shall agree, inter alia, on procedures under which the appropriate authorities of one State may board, inspect and, if appropriate, arrest a fishing vessel entitled to fly the flag of another State, including the notification requirements for such action and the procedures under which one State might detain the vessel of another State. All investigations and judicial proceedings shall be carried out expeditiously.

32. States may take cooperative action, in accordance with international law, to prevent vessels which have violated applicable conservation and management measures, rules or standards, from fishing in a particular region or regions until such time as appropriate enforcement action is taken by the flag State. Those actions may include, inter alia, the provisional cancellation of the offending vessel's authorization to fish in respect of the particular region concerned.

33. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is apparently without nationality, a State may take such action as is necessary to board and inspect the vessel. Where evidence so warrants, the State may institute proceedings in accordance with the general rules of international law.

34. When a fishing vessel conceals its identity or indicates a registry to which it does not belong, and there are reasonable grounds for suspecting that such vessel has undermined applicable conservation and management measures, States may, in accordance with regionally agreed arrangements, board and inspect the vessel. When the flag State has been identified, the inspecting State shall, as soon as possible, inform the flag State and request the latter to take control of the vessel for enforcement purposes. Until that time, the inspecting State may detain the vessel for such reasonable period as is necessary for the flag State to take control of the vessel for enforcement purposes. The inspecting State may, with the agreement of the flag State, take other appropriate action.

35. States shall give due publicity to the measures taken by subregional or regional agreements or arrangements concerning conservation and management of straddling fish stocks and highly migratory fish stocks.

VI. PORT STATES

36. A port State shall take, in accordance with international law, such measures as are necessary to promote the effectiveness of applicable conservation and management measures. When taking such measures a Port State shall not discriminate against the vessels of any State.

37. A port State may, inter alia, inspect documents and catch on board fishing vessels, when such vessels are voluntarily in its ports and offshore terminals and, except in cases of force majeure or distress, may deny access to these facilities. A port State may also carry out such inspections at the request of a flag State in order to assist the flag State in enforcement of its laws relating to conservation and management of straddling fish stocks and highly migratory fish stocks. The port State shall inform the flag State whenever such inspection discloses reasonable grounds for believing that the vessel has contravened or otherwise undermined conservation and management measures or has fished on the high seas without a licence, authorization or permit.

38. The port State may detain a vessel for such reasonable period as is necessary for the flag State to take control of the vessel or otherwise take responsibility for enforcement purposes. If the port State detains a vessel for this purpose it must promptly inform the flag State.

39. States may enact legislation empowering the relevant national authorities to prohibit landings where the catch has been taken in a manner that undermines the effectiveness of applicable conservation and management measures.

VII. NON-PARTICIPANTS IN SUBREGIONAL OR REGIONAL ORGANIZATIONS OR ARRANGEMENTS

40. Where a State does not participate in the work carried out through a subregional or regional fisheries management organization or arrangement, that State is not discharged from the obligation to cooperate in the conservation and management of the regulated stock(s).

41. A State which does not cooperate with a relevant subregional or regional fisheries management organization or arrangement shall not authorize vessels entitled to fly its flag to operate in fisheries which are subject to conservation and management measures established by that organization or arrangement. Vessels flying the flag of a State not cooperating with the relevant subregional or regional fisheries management organization or arrangement shall not fish contrary to the conservation and management measures established by that organization or arrangement.

42. States which are members of, or participate in, subregional or regional fisheries management organization or arrangement shall exchange information with respect to the activities of fishing vessels which fly the flags of States which are neither members of nor participate in the organization or arrangement and which are operating in the fishery for the relevant stock(s).

43. States shall cooperate in a manner consistent with international law to the end that fishing vessels entitled to fly the flags of States which are neither members of nor participate in the organization or arrangement and which are operating in the fishery for the relevant stock(s) do not engage in activities that undermine the effectiveness of applicable conservation and management measures. To this end States which are members of or participate in the work of a subregional or regional fisheries management organization or arrangement shall take measures, individually or collectively, which they deem necessary and appropriate to deter such activities.

VIII. DISPUTE SETTLEMENT

44. All States shall cooperate in order to prevent disputes. States have the obligation to settle their disputes by negotiation or other peaceful means.

45. States may use any of the procedures for dispute settlement contained in the Convention, including compulsory recourse to binding dispute settlement. Where all parties to a dispute are also parties to the Convention, the provisions for the settlement of disputes under Part XV of the Convention shall apply unless the parties agree otherwise.

46. Subregional or regional fisheries management organizations or arrangements shall adopt procedures for compulsory and binding settlement of disputes, consistent with the Convention, to ensure the expeditious resolution of disputes relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. States which are participants in such subregional or regional fisheries organizations or arrangements shall comply with the agreed procedures unless such participants agree to use the provisions for the settlement of disputes contained in the Convention, or agree otherwise.

47. States that are not participants in a subregional or regional fisheries management organization or arrangement may invoke or submit to the dispute settlement procedure established by the organization or arrangement. States which are participants in such organizations or arrangements shall submit to such procedure when it is invoked by non-participants on matters which fall within the competence of the organization or arrangement, unless the parties to the dispute agree otherwise.

48. In the event that the parties to a dispute, whether or not they are participants in a subregional or regional fisheries organization or arrangement, are unable to agree on the same procedure to be applied within 30 days of receipt of notification that a dispute exists between them, the arbitration procedures set out in annex 3 shall apply.

49. Where the issue in dispute has technical aspects, States concerned may refer the matter to an ad hoc expert panel established by the parties to the dispute. The panel may assist and advise the States concerned to enable them to resolve the matter speedily without recourse to formal dispute settlement procedures.

50. The dispute settlement provisions herein shall not apply to disputes with coastal States relating to the sovereign rights of coastal States with respect to the living resources in their exclusive economic zones or the exercise of those rights and they do not affect in any way the provisions of Article 297 of the Convention.

IX. SPECIAL REQUIREMENTS OF DEVELOPING STATES

51. In exercising their rights and fulfilling their responsibilities with regard to conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, States shall give full recognition to the special requirements of developing States. In this regard, States shall, through the appropriate mechanisms for cooperation provided for in section IV of this document and, as appropriate, through FAO, cooperate to provide assistance to developing States.

52. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources for the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impact on subsistence and small-scale commercial fisheries in developing States, particularly small island developing States, which are culturally and economically dependent upon the exploitation of living marine resources;

(c) the need for specific assistance, including financial, scientific and technological assistance and training, in order that developing States can fulfil their obligations with respect to conservation and management of straddling fish stocks and highly migratory fish stocks;

(d) the need to ensure that the measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States, especially the least-developed amongst them.

53. Specific forms of cooperation with developing States for the purposes set out in the present section shall include financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including joint venture arrangements, and appropriate advisory and consultative services. Assistance should be directed in the following areas:

(a) collection, reporting, verification and exchange of fisheries and fisheries-related data and information;

(b) stock assessment and scientific research, including study of the interaction between subsistence, small-scale and artisanal fisheries;

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, the development and funding of national and regional observer programmes and access to technology and equipment;

(d) access to dispute settlement mechanisms within regional and subregional organizations or arrangements;

(e) greater participation of developing States in fisheries for straddling fish stocks and highly migratory fish stocks.

54. States shall cooperate to enhance the ability of developing States to conserve, manage and develop their own national fisheries for straddling fish stocks and highly migratory fish stocks in the exclusive economic zone and on the high seas. Such cooperation shall take the form of special assistance to developing States, including allowing for favourable access for developing States located in a particular subregion or region to high seas areas adjacent to their exclusive economic zones to enable them to participate in high seas fisheries for straddling fish stocks and highly migratory fish stocks.

55. States shall cooperate to establish a voluntary fund to assist developing States and in particular to enable developing States to meet the costs involved in any dispute settlement proceedings to which they may be parties.

56. States and international and regional organizations should assist developing States in establishing new fisheries organizations or arrangements or strengthening existing organizations or arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks.

X. REVIEW OF THE IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES

57. States, subregional and regional organizations, and arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks shall implement the foregoing based on their capacities and the needs of the region. They shall report biennially to the Secretary-General of the United Nations who shall submit a report biennially to the General Assembly on the progress made in the implementation of the provisions of this document, taking into account information provided by States, the FAO and its fisheries bodies, other relevant intergovernmental bodies and relevant non-governmental organizations. The Secretary-General shall also report as required to the Commission on Sustainable Development.

58. A full review of the implementation of the provisions herein shall be undertaken by a conference to be held five years from the date of adoption of this text. The conference shall review and assess the adequacy of the provisions herein and, if necessary, propose means of strengthening the substance and methods of implementation of the provisions and measures in order to address any continuing problems in fisheries for these stocks.

Annex 1

MINIMUM STANDARD FOR DATA REQUIREMENTS FOR THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. The timely collection, compilation, analysis and evaluation of data are fundamental for effective fishery conservation and management. Effective conservation and management of straddling fish stocks and highly migratory fish stocks require the availability of relevant fisheries data from the entire stock. To this end, the data from fisheries on the high seas and those in areas under national jurisdiction should be compiled in a way which enables statistically meaningful analysis. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected in support of conservation and management of target stocks shall also include information on associated and dependent species, whether they are fish or non-fish species. Data collected shall be verified to ensure accuracy, while maintaining the confidentiality of non-aggregated data to ensure cooperation by industry.

2. Consideration should be given to enhancing training and providing financial and technical assistance to developing States with regard to building capacity in the field of conservation and management of living marine resources. The fullest possible involvement of developing country scientists and managers in fisheries conservation and management should be promoted. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments.

Principles of data collection

3. The following general principles should be considered in defining the parameters for collection, compilation, and exchange of data from high seas fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) a State is obliged to collect adequate data from vessels entitled to fly its flag;

(b) data should be collected on fishing operations according to the operational characteristics of each fishery (e.g. individual trawl tow, long-line set, school fished for pole-and-line and purse-seine, day fished for troll) and in sufficient detail to enable effective analysis;

(c) fishery data should be verified through an appropriate system;

(d) States shall compile fishery-related and other supporting scientific data in an internationally agreed format and provide them in a timely manner to the relevant subregional or regional fisheries organization or arrangement. The subregional or regional fisheries organization or arrangement should request non-participants to provide data relating to their fishing in the region;

(e) scientists of the flag State and from the relevant subregional or regional fisheries organization or arrangement should analyse these data separately or jointly, as appropriate;

(f) the subregional or regional fisheries organization or arrangement shall compile data and make them available in a timely manner in an agreed format to all interested States under the terms and conditions established by the organization or arrangement.

Basic fishery data requirements

4. The following types of data should be collected in sufficient detail to facilitate effective stock assessment:

(a) time series of historical catch and effort statistics by fleet;

(b) total catch in number and/or nominal weight [defined by FAO as: (landings + losses due to dressing, handling and processing - gains prior to landings) x conversion factors] by species (both target and non-target, including non-fish species) as is appropriate to each fishery;

(c) discard statistics, including estimates where necessary, reported as number and/or nominal weight by species;

(d) effort statistics appropriate to each fishing method;

(e) fishing location, date and time fished, and other statistics on fishing methods as appropriate.

Scientific data supporting stock assessment

5. In addition to collection, compilation and exchange of fishery data, States are obliged to exchange scientific data, which should include:

(a) length, weight and sex composition of the catch, where agreed;

(b) information supporting stock assessments and stock identification;

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological data.

Vessel data and information

6. The following vessel-related data are required for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) vessel identification, flag and port of registry;

(b) vessel type;

(c) vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engine(s), hold capacity, catch storage methods);

(d) fishing gear description (e.g. type, amount and gear specifications).

7. The following information need not be provided if available through other means:

(a) navigation and position fixing aids;

(b) communication equipment and international radio call sign;

(c) crew size.

Data reporting

8. The following data on high seas fishing operations should be sent at frequent intervals to the national fisheries administrations of the flag State:

(a) catch and effort log book data, including data on fishing operations;

(b) catch and effort reports by radio, telex, facsimile and/or satellite transmission.

Data verification

9. States or, as appropriate, subregional or regional fisheries organizations or arrangements, should establish mechanisms for verifying fishery data. Such mechanisms should include:

(a) position verification through vessel monitoring systems;

(b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;

(c) vessel trip, landing and transshipment reports;

(d) port sampling.

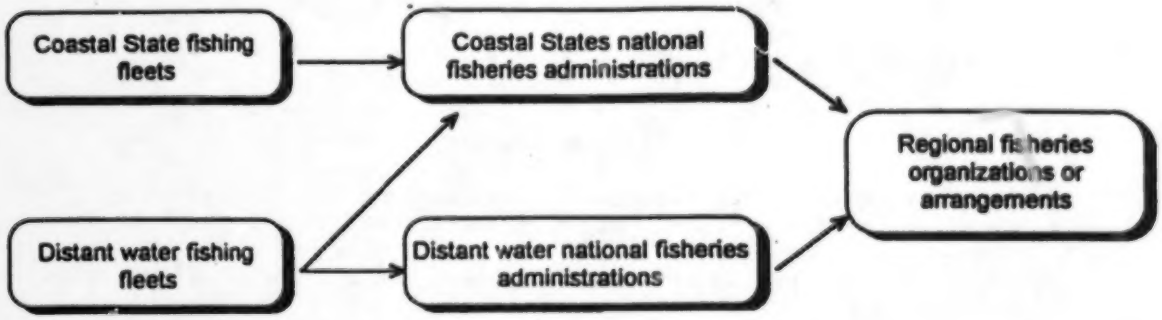
Data exchange

10. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries organizations or arrangements. Subregional or regional fisheries organizations or arrangements shall endeavour to compile data from the stocks as a whole and make data available to all interested parties. Subregional or regional fisheries organizations and arrangements should, to the extent feasible, develop database management systems which provide access to data electronically.

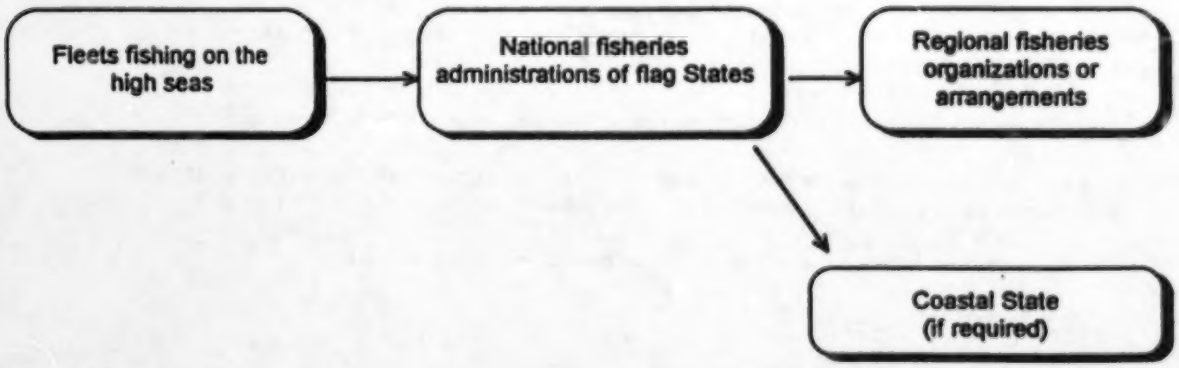
11. Within the framework of subregional or regional fisheries organizations or arrangements member States should agree on the specification of data and the format in which they are to be provided, in accordance with the provisions of this annex and taking into account the nature of the stocks and the fisheries for those stocks in the region.

12. The following models of data exchange outline mechanisms currently in effect:

Data flow arrangements within EEZs


Coastal State fishing fleets
Coastal States national fisheries administrations
Regional fisheries organizations or arrangements
Distant water fishing fleets
Distant water national fisheries administrations

Data flow arrangements for high seas fishing operations


Fleets fishing on the high seas
National fisheries administrations of flag States
Regional fisheries organizations or arrangements
Coastal State (if required)

At the global level, collection and dissemination of global data should be effected through the Food and Agriculture Organization of the United Nations (FAO). Where a subregional or regional fisheries organization or arrangement does not exist, FAO may also do the same at a regional level by arrangement with the States concerned.

Annex 2

SUGGESTED GUIDELINES FOR APPLYING PRECAUTIONARY REFERENCE POINTS IN MANAGING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. Management strategies should seek to maintain or restore populations of harvested stocks at levels consistent with previously agreed precautionary reference points. These strategies should include measures which can be adjusted rapidly as reference points are approached.

2. Conservation and management objectives should be stock specific and take account of the characteristics of fisheries exploiting the stock.

3. Distinct reference points are used to monitor progress against conservation and management objectives. Reference points should incorporate all relevant sources of uncertainty. When information for determining reference points for a fishery is poor or absent, provisional reference points should be set. In such situations, the fishery should be subject to enhanced monitoring so as to revise reference points in light of improved information as soon as possible.

4. Reference points related to conservation objectives should be chosen to warn against over-exploitation. Management strategies using such reference points should ensure that the risk of exceeding them is low. In this context maximum sustainable yield should be viewed as a minimum international standard. Conservation-related reference points should ensure that fishing mortality does not exceed, and stock biomass is maintained above, the level needed to produce the maximum sustainable yield. For already depleted stocks, the biomass which can produce maximum sustainable yield can serve as an initial rebuilding target.

5. Management-related reference points provide an indicator as to when and how quickly maximum allowable levels of stock removals are being approached. Management action should ensure that such reference points, on average, are not exceeded.

Annex 3

ARBITRATION

Institution of proceedings

1. Any party to a dispute may submit the dispute to arbitration by written notification addressed to the Secretary-General of the United Nations, who shall notify the other party or parties to the dispute and constitute an arbitral tribunal as set out herein. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Constitution of arbitral tribunal

2. The arbitral tribunal shall, unless the parties to the dispute agree otherwise, be constituted as follows:

(a) subject to subparagraph (f), the arbitral tribunal shall consist of five members;

(b) the party instituting the proceedings shall appoint one member, who may be its national. The appointment shall be included in the notification referred to in paragraph 1 of this annex;

(c) the other party to the dispute shall, within 20 days of receipt of the notification, appoint one member, who may be its national. If the appointment is not made within this period, the appointment shall be made by the Secretary-General within a further 20 days;

(d) the other three members shall be appointed by agreement between the parties, and shall be nationals of third States unless the parties agree otherwise. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 20 days of receipt of the notification referred to in paragraph 1 of this annex, the parties are unable to reach agreement on the appointment of one or more members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within 10 days of the expiration of the aforementioned 20-day period;

(e) unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties to the dispute, the Secretary-General shall make the necessary appointments. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute;

(f) any vacancy shall be filled in the manner described for the initial appointment;

(g) parties to the dispute in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties to the dispute having separate interests, or where there is disagreement as to whether they are of the same interest, the Secretary-General shall appoint one member of the tribunal after consultation with the parties;

(h) in disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply mutatis mutandis.

Submission of memoranda

3. Within 20 days of the constitution of the tribunal, the parties to the dispute shall file a memorandum with the tribunal, copies of which shall be transmitted to all parties.

Procedure

4. Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedures, assuring to each party full opportunity to be heard and to present its case.

Hearings

5. A hearing shall be convened at a place and on a date to be determined by the tribunal within 40 days following the constitution of the tribunal.

Duties of parties to a dispute

6. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

(a) provide it with all relevant documents, facilities and information; and

(b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Expenses

7. Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Required majority for decision

8. Any decision of the arbitral tribunal shall be taken by a majority of its members. In the event of an equality of votes, the President shall have the casting vote.

Default of appearance

9. If one of the parties to a dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself, not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and in law.

Provisional measures

10. The tribunal may prescribe provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties or to prevent damage to the stock(s) in question, pending the final decision.

Award

11. The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award. The tribunal shall communicate its decision to all parties within 30 days of the end of the hearing. Reasons in writing shall be communicated to the parties within 60 days of the decision.

Finality of award

12. The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

Interpretation or implementation of the award

13. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

Application to entities

14. The provisions of the present annex shall apply, mutatis mutandis, to any dispute involving any entities.